

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NOs : 18026 of 1993 and 7462 of 1995.

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W.P.NO.18026 OF 1993.

Between:

The Management of Kerala State Electronics
Development Corpn. Ltd.,rep. by Branch
Manager,SriG. Sreekumar, Ashoknagar, Hyderabad

.....PETITIONER

AND

- 1 The Industrial Tribunal-II, Hyderabad
"Chandra Vihar Buildings Complex", IInd Floor,
M.J. Road, Hyderabad
- 2 The State of A.P. rep. by Prl. Secretary
Women Dev., Child Welfare & Labour (Lab.I) Dept.,
Secretariat, Hyderabad
- 3 Asst. Commissioner of Labour & Consilation Officer
Hyderabad-II "Chandra Vihar Buildings Complex",
7th Floor, M.J. Road, Hyderabad
- 4 B.H. Jethwa S/o late Harilal
R/o H.No.12-7-157/1, Besides: Ayyappa Temple,
Mettuguda, Secunderabad-500003

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction particularly one in the nature of writ of certiorari calling for the records relating to G.O.Rt.No.1454-Women Development and Child Welfare & Labour (Lab.I) Dept., dt: 1-6-1990 in I.D.No.12/92 on the file of the 1st respondent and quash the Award passed by the 1st respondent in I.D.No.12/92 dt: 6-8-1993, published on 18-10-1993 holding the same as illegal, unjust, contrary to law, perverse and without jurisdiction.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent Nos.1 to 3: G.P. FOR LABOUR

Counsel for the Respondent No.4:Mr.B.G.RAVINDRA REDDY

W.P.NO.7462 OF 1995

Between:

B.H.Jethwa son of late Sri Harilal

Aged about 37 yrs, resident of Hyderabad.

.....PETITIONER

AND

1.The Labour Court No.1 II floor,

Chandravihar buildings, Opp Exhibition

Grounds, Hyderabad.

2.The Management of Kerala State Electronics

Development Corporation Limited,

Keltron situated at 1-1-300/B,Ashok Nagar,

Hyderabad rep. by its Branch Manager.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or issue a Writ particularly one of Certiorari and quash the award dated 5-11-1994 in I.D.No.301 of 1990 on the file of the Labour Court I, Hyderabad after calling for the records on its file.

Counsel for the Petitioner: MR.B.G.RAVINDER REDDY

Counsel for the Respondent No.1: G.P. FOR LABOUR

Counsel for the Respondent No.2: MR.A.K.JAYAPRAKASH RAO

The Court made the following :

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COMMON ORDER

Since the parties are common and the question involved is also common, both the writ petitions are taken together for disposal.

The petitioner in W.P.No.18026 of 1993 is the Management whereunder the petitioner in W.P.No.7462 of 1995 is the employee. In both these writ petitions, a challenge is made against the award of the Labour Court in I.D.No.12/1992 dated 6-8-1993 and I.D.No.301/1990 dated 5-11-1994 respectively.

The true facts which are necessary for disposal of these two Writ Petitions are that the petitioner in W.P.No.7462 of 1995 was initially appointed on 15-2-1980 as a Trainee Service Technician at Hyderabad branch and thereafter he was promoted as Service Technician from 25-2-1981. He was further promoted as Senior Service Technician III on 16-9-1982 and further promoted as Service Technician II on 8-8-1984 and also as Service Supervisor on 11-10-1985. Thereafter once again he was promoted as Senior Supervisor (Service) on 6-1-1989 w.e.f.7-7-1989 along with other employees. All along he has been working at Hyderabad. However as per the proceedings dated 6-2-1989 he was transferred from Hyderabad branch to Gauhati which has lead to several disputes including the suit in O.S.No.677 of 1989 on the file of the V Asst. Judge, City Civil Court, Hyderabad wherein he obtained an interim injunction and subsequently the same was vacated on contest. Like that he raised a dispute and ultimately the matter was referred to Labour Court and after enquiry the reference was answered in favour of the employee holding that the said transfer is not valid. In the meanwhile he was terminated from services since he did not comply the orders of transfer and once again a dispute was raised and it was taken up in I.D.301 of 1990. In both these

proceedings the management had raised objection to the effect that the said employee being a Supervisor would not fall within the definition of Workman as contemplated under the Industrial Dispute Act and therefore, the reference is not valid. In I.D.No.12 of 1992 the said objection was rejected and ultimately it was answered in favour of the employee. However in I.D.No.301 of 1990 the said objection was upheld on the ground that he is not a Workman and therefore, the said reference was closed.

The main submission made on behalf of the management and the employee ultimately revolves around as to whether the said employee is a workman so as to attract the provisions of the Industrial Dispute Act for the purpose of raising any dispute. Thus, there is no challenge against the orders of transfer.

It is contended on behalf of the employee that the very same Labour Court having held that employee is a workman could not have negated the said plea and given any finding against the employee and any such approach is totally in the teeth of principles of *res judicata*. Simultaneously on behalf of the management also it is contended that the finding with regard to whether the employee is a workman or not is contradictory and therefore, there could not have been any such varying finding or approach.

In view of the said submissions made, the question which falls for consideration is:

“ Whether the employee is a workman and entitled to raise any dispute under the Industrial Dispute Act?”

There is no dispute to the basic facts that subsequent to the initial appointment, the employee was promoted to various stages and ultimately at the relevant point of time he is working as Senior Supervisor. There is no dispute to the fact that such promotion was also given with retrospective effect from 1-7-1988 and the employee has availed all the benefits from the said date by drawing difference of wages. However, there is no whisper or any demur much less any objection on the part of the employee as against the said promotion to the post of Senior Supervisor. There is no serious challenge in regard to finding given by the Labour Court that the said employee is enjoying all the privileges of Executive Officer of the management. Several employees are working under his control. The said employee was drawing

the salary and emoluments at Rs.1,960/- per month and is governed by totally a set of rules. An attempt is made on the part of the employee that the said promotion which was given with retrospective effect was only with ulterior motive to deprive his status of workman. However, the said submission was not accepted by the Labour Court. Having regard to the fact that there was no serious challenge against the very promotion or the benefits which have been conferred including payment of difference emoluments, it is not open for the employee now to make any challenge or to claim as a workman. The said employee had infact obtained this promotion as a Senior Supervisor (services) of which the duties include the distribution of duties among workers and assigning the duties to them and also checking the works of the workers and with added acts of recommendation of the rules to the workers. In view of the same, in the subsequent award, the Labour Court has rightly held that the said employee is not a workman and therefore, is not entitled to invoke the provisions of the Industrial Dispute Act. I do not find any error in the approach or reasons given in support of such finding nor there is any concerned material produced in these two writ petitions to vary with the same. In the circumstances, it has to be held that the petitioner in W.P.No.7462 of 1995 is not a workman and cannot invoke the provisions of Industrial Dispute Act. Hence the same is accordingly dismissed. Following the same and on the self same reasons, W.P.18026 of 1993 stands allowed.

23-11-2004.

Hsd

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Tuesday, the Twenty Third day of Two Thousand and Four

Asst.Registrar.

To

1 The Principal Officer,Industrial Tribunal-II,
Hyderabad "Chandra Vihar Buildings Complex", IInd
Floor, M.J.Road, Hyderabad

2. The Presiding Officer, Labour Court No.1, II
floor, Chandravihar, Hyderabad.

3. The Prl.Secretary State of A.P. Women Dev.,
Child Welfare & Labour (Lab.I) Dept.,
Secretariat, Hyderabad

4. Asst. Commissioner of Labour & Consilation
Officer Hyderabad-II "Chandra Vihar Buildings
Complex", 7th Floor, M.J. Road, Hyderabad

5 2 C.Cs to G.P. for Labour, High Court of A.P.
High Court buildings, Hyderabad (Out)

6. 2 C.D. copies